



Advice Regarding Independent Expenditures for the 2012 Elections

This memo answers some frequently asked questions about whether independent expenditure reporting is required. A copy of the relevant law (21-A M.R.S.A. § 1019-B) is attached with the corresponding Commission rule regarding independent expenditures. For advice about how to file an independent expenditure report, please see the instructions on the reporting form.

What is an “independent expenditure?”

Independent expenditures are payments or obligations made by individuals and organizations, acting independently of candidate campaigns, for certain communications referring to clearly identified candidates.

More specifically, payments or obligations made for communications (for example, advertisements in print or on television or the Internet, literature, robocalls) that expressly advocate the election or defeat of a candidate are always considered independent expenditures.

In addition, payments or obligations made for communications are presumed to be independent expenditures if the communication 1) is disseminated within 21 days before a primary election or within 35 days before the general election, 2) names or depicts a clearly identified candidate, and 3) involves a race in which a Maine Clean Election Act certified candidate is running.

These two periods before an election are referred to below as the “presumption periods.”

Presumption Periods for the 2012 Elections		
Election	Length (includes election day)	Dates
Primary	21 days	May 23 – June 12
General	35 days	October 3 – November 6

Some communications are exempt from the presumption, such as slate cards sent by political party committees (please see exceptions below).

How do I know if my advertisement or literature “expressly advocates” the election or defeat of a candidate?

The term “expressly advocate” is defined in Chapter 1, Section 10(2)(B) of the Commission rules, which is attached to this memo. The definition includes phrases such as “Jones for House of Representatives” or “Vote for the Governor,” and other words which in context can have no reasonable meaning other than to urge the election or defeat of one or more clearly identified candidates.

Since the Commission adopted the rule, the Commission has been asked whether certain communications constitute express advocacy. In order to provide better guidance to organizations making campaign-related expenditures, the Commission has attached to this memo three examples of campaign literature, which are discussed below.

In February 2010, the Commission gave further consideration to some of its prior determinations applying the express advocacy rule. As a result of this review, the Commission decided to clarify that, in a communication to voters, the identification of the office sought by a candidate named in the communication is a factor that the Commission generally will consider in favor of a determination that the meaning of the communication is to urge the election or defeat of a candidate. The determination of whether the communication constitutes express advocacy will be based on the entire content of the communication, and whether the communication has any reasonable meaning other than to urge the election or defeat of a candidate.

The Commission offers the following guidance on the attached three examples of campaign literature

- In the 2008 general election, the Maine Democratic Party mailed the attached literature concerning Peter Kent. Mr. Kent was a candidate for the Maine House of Representatives, but the literature did not mention his candidacy or the election.

This communication was determined not to contain express advocacy.

- In the 2006 general election, the Maine Democratic Party sent the attached literature in support of Anne Rand. In that election, Ms. Rand was a candidate for the Maine House of Representatives, but she was not an incumbent. Nevertheless, the front of the card included the phrase “Anne Rand/State Representative.”
- In the 2008 general election, the Maine Republican Party mailed literature concerning Jane Knapp. Ms. Knapp was a candidate for the House of Representatives, and was not an incumbent. The literature did not mention her candidacy explicitly, but it contained the phrase “Maine Families Deserve a Representative Who Will Fight for Them.”

With respect to the Anne Rand and Jane Knapp literature, the Commission advises that the identification of the office sought by a candidate named in a communication will favor a determination that the only reasonable meaning of the communication was to urge the election or defeat of a candidate.

How do I report independent expenditures?

Please see the independent expenditure reporting form for instructions on how to file the report. Under the Commission’s rules, entering into an obligation to make an independent expenditure may require the filing of a report regardless when the payment for the communication is made.

Does making an independent expenditure turn me or my organization into a political action committee?

If an organization spends more than \$5,000 in a calendar year to influence candidate elections, it must register with the Commission as a political action committee, even if its major purpose is something other than the influencing of candidate elections. (21-A M.R.S.A. § 1052(5)(A)(5))

The term “influence” means to promote, support, oppose or defeat. (21-A M.R.S.A. § 1052(4-A))

If your organization’s major purpose is to influence candidate or ballot question elections, a lower threshold (\$1,500) for the registration requirement may apply. Please contact the Commission to find out what your registration and reporting requirements are.

This requirement does not apply to individuals.

I have heard that I should not coordinate my spending with the candidate I want to support. Why?

Independent expenditures must be independent of the candidate. Any expenditure made by a third-party in consultation or cooperation with a candidate is considered to be a contribution to the candidate and is not an independent expenditure. For example, if a supporter wants to place an ad supporting a candidate in the local newspaper and asks for and obtains a campaign photograph from the candidate or the candidate’s campaign manager, that is enough to make the entire cost of the ad a contribution to the candidate. The cost would have to be reported by the candidate as a contribution. The supporter would not be required to file an independent expenditure report.

It would be permissible for a traditionally financed legislative candidate to accept a supporter’s payment for an ad as an in-kind contribution, but only up to \$350 because that is the contribution limit per election for legislative candidates. The candidate would have to reimburse the supporter for any amount over \$350. For county candidates and some municipal candidates, the contribution limit is \$750 per election. Gubernatorial candidates can accept contributions of up to \$1,500 per election.

Maine Clean Election Act (MCEA) candidates cannot accept any contributions at all. An MCEA candidate would have to pay for the entire cost of the ad.

To find out more about what is considered to be coordination and what is not, please refer to the Commission’s rule on coordination which is attached to this memo. You can also contact the Commission staff.

What paid communications are covered by the rebuttable presumption?

The law was designed to apply to written and oral communications intended to influence the nomination, election, or defeat of a candidate. Under the Commission’s rules, the following types of communications are covered by the rebuttable presumption:

- Printed advertisements in newspapers and other media
- Television and radio advertisements
- Printed literature
- Recorded telephone messages
- Live scripted telephone calls or messages
- Electronic communications.

This list is not exhaustive and other types of communications may also be covered. In general, any expenditure that has all of the following four elements is covered by the rebuttable presumption:

- an expenditure made to design, produce, or disseminate a communication
- that is disseminated in the last 21 days before a primary election or in the last 35 days before a general election
- that names or depicts a clearly identified candidate, and
- who is in a race involving a Maine Clean Election Act candidate.

If the expenditure is covered by the presumption and is greater than \$100 per candidate, the person making the expenditure must either file an independent expenditure report or a signed statement that the expenditure was not made with the intent to influence the election (see below).

What determines if a communication is made within the presumption period?

The presumption period applies to when the communication is disseminated to voters. The date of the dissemination is the date of the postmark, broadcast, or hand-delivery of the communication.

If expenditures are made before the presumption period to design or produce a communication that is then disseminated during the presumption period, the expenditure may nevertheless be covered by the presumption, and the costs of designing, producing, and disseminating the communication must be reported in an independent expenditure report.

How do I rebut the presumption that the communication is a campaign-related independent expenditure?

To rebut the presumption, the person making the expenditure must file a signed written statement within 48 hours of making the expenditure that the expenditure was not made in order to influence the election. As a convenience, the Ethics Commission has developed a form that may be used for this purpose but using the form is not mandatory. The person filing a rebuttal statement is welcome to include any relevant evidence. It is acceptable to file the rebuttal statement by faxing it to (207) 287-6775. Please note that the rebuttal statement must be filed within the 48-hour deadline even if the deadline falls on a weekend or holiday.

If a person has a specific communication that appears to be covered by the presumption, but the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

While there is no penalty for failing to file a statement rebutting the presumption within 48 hours, if the Commission determines that the communication was covered by the presumption and an independent expenditure report was not filed on time, the person making the expenditure could be assessed a penalty for late filing.

The Commission will take into consideration any evidence relevant under the statute, including the following:

- Does the language of the communication appear designed to influence the nomination, election, or defeat of a candidate?
- Was the communication disseminated to voters in the district of the candidate(s) mentioned in the communication?
- Was the communication disseminated to voters in other districts?
- How many voters received the communication?
- Is the communication directed to voters at all?
- Does the communication seem primarily designed for some identifiable purpose other than influencing the nomination, election, or defeat of a candidate?
- Does the communication mention all candidates running in the district?
- When was the communication produced, and when was it distributed?

The Commission will consider each rebuttal statement on a case-by-case basis. The determination will depend on the factors listed above, and any other evidence deemed relevant by the Commission.

What if the cost of a communication is less than \$100 per candidate?

The definition of independent expenditure applies only to expenditures for communications. If the person making the communication did not spend or obligate more than \$100 per candidate to design, produce, or disseminate the communication, no independent expenditure report or rebuttal statement is necessary. However, once the aggregated costs for any candidate exceed \$100, a report must be filed for communications regarding that candidate.

Example: a community organization maintains a list of e-mail addresses of individuals who are concerned about local economic development issues. At no cost, it sends an e-mail to the concerned citizens endorsing a legislative candidate. The organization would not be required to file an independent expenditure report or submit a rebuttal statement because the communication involved no expense.

Please note that if an organization uses materials produced by another entity (e.g., a legislative scorecard), the cost of producing that material must be included in the total amount for that communication (see below).

Are there any expenditures that are exempt from the reporting requirement and the rebuttable presumption?

Certain election-related activities are excluded from the legal definition of “expenditure” or “independent expenditure” in the Election Law. They do not need to be reported as independent expenditures and the rebuttable presumption does not apply to them. These excluded costs include:

- News stories and editorials distributed through a broadcasting station, newspaper, or other periodical publication, unless the facilities are owned or controlled by any political party, political committee, candidate or candidate’s immediate family;
- Any communication from a membership organization (e.g., a union or trade association) or corporation to its members or stockholders if that organization is

not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;

- Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate;
- The use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider;
- The payment by a party committee for a slate card or party candidate listing (see definition below);
- A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the call recipient's voting position or discouraging the recipient from voting;
- A telephone call made to identify an individual's position on a candidate, ballot question or political party as long as the communication contains no advocacy for or against a candidate; and
- A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against a candidate.

For a full list of exceptions to the legal definition of "expenditure," see 21-A M.R.S.A. § 1012(3)(B).

Isn't there an exception for communications naming three or more candidates?

There is an exception for communications involving three or more candidates, but it applies only to state and local party committees and only to communications that meet the following requirements:

- The communication lists the names of at least three candidates for election to public office (this can be a combination of federal, state, and local candidates).
- The communication is distributed through public advertising such as broadcast stations, cable television, newspapers and similar media, or through direct mail, telephone, electronic mail, publicly accessible sites on the Internet, or personal delivery.
- The treatment of all candidates in the communication is substantially similar (although if required by federal law, a federal candidate may be treated differently).
- The content of the communication is limited to:
 - (1) The identification of each candidate, with which pictures may be used;
 - (2) The offices sought;
 - (3) The offices currently held by the candidates;
 - (4) The party affiliation of the candidates and a brief statement, including campaign slogans, about the party's or the candidates' positions, philosophy, goals, accomplishments, or biographies;
 - (5) Encouragement to vote for the candidates identified;
 - (6) Information about voting, such as voting hours and locations; and
 - (7) Campaign or party logos.

If the communication contains language outside the categories of this paragraph, it does not qualify as a slate card.

Are telephone communications covered by the rebuttable presumption?

In the view of the Commission, the rebuttable presumption in Section 1019-B would cover automated telephone messages and live calls from individuals that are scripted, if the communications have the four elements described above on page 4 and do not meet the criteria to be excluded listed above.

Are there any individuals or organizations that are exempt from the presumption?

Section 1019-B does not exempt any category of individuals or organizations from the rebuttable presumption. Nevertheless, as noted above, some expenditures by membership or news organizations and party committees are excluded from the legal definition of expenditure, and therefore are not covered by the independent expenditure law.

Does my membership organization have to report its communications to its members?

The Election Law contains an exemption for certain communications by membership organizations that are not organized primarily for the purpose of influencing an election. Communications from those organizations to their members are not considered expenditures, and therefore are not considered independent expenditures. However, if the communication expressly advocates for the election or defeat of a candidate and the cost of the communication is more than \$50 in any one candidate's election, the expenditures must be disclosed in a special report required by 21-A M.R.S.A. § 1019-A.

What if the costs of producing the communication are paid for by an organization that is different than the organization that disseminates the communication? Which organization must file an independent expenditure report or a rebuttal statement?

Some of the questions posed to the Commission suggest that organizations may purchase or produce copies of a written communication (such as a legislative scorecard or voting record) and provide them to another organization that will distribute them. Persons paying for or disseminating communications covered by the presumption will be expected to demonstrate a high degree of good faith to ensure that all design, production, and distribution costs are reported to the Commission.

When calculating whether it has spent more than \$100 per candidate, an organization that has been supplied printed communications covered by the presumption and that distributes them must report *both* its own distribution costs *and* the value of the materials it has distributed. The Commission requests that the organization make a good faith effort to determine the value of the materials by ascertaining the *actual* design and production costs of the materials distributed. If the actual costs cannot be determined with a reasonable effort, the organization should estimate the fair market value of the materials it has distributed. Both the distribution costs and the value of the materials must be included in the independent expenditure report, unless the organization has filed a rebuttal statement.

Example: A PAC receives 500 copies of literature referring to a candidate that it distributes one week before the general election in order to influence the outcome of the election. By checking with the person or organization that supplied the literature, the PAC determines that the actual

cost of the literature was \$400. The PAC spends \$200 distributing the literature. The PAC should file an independent expenditure report with a total expenditure of \$600.

What about legislative scorecards or voting records of Legislators?

Some organizations produce literature that summarizes Legislators' voting records on particular issues and rates the Legislators on their voting records. These communications may not contain any express advocacy for or against a candidate. However, if these communications have the four elements of the rebuttable presumption described above on page 4, the person paying for or disseminating the literature will be required to file either an independent expenditure report or a written statement rebutting the presumption if more than \$100 is spent in any candidate's race. For communications that refer to multiple candidates, the Commission's rule (attached) explains how to allocate the cost among the candidates.

If a membership organization sends a communication such as a legislative scorecard to its members, it would not be considered an independent expenditure or covered by the rebuttable presumption but the organization may have to file a report with the Commission if the communication contains express advocacy for or against a candidate.

Are communications designed to encourage individuals to register to vote or to vote covered by the presumption?

The Election Law excludes from the legal definition of expenditure "activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate." (21-A M.R.S.A. §§ 1012(2)(B)(10) & 1052(4)(B)(2)) Those communications are not covered by the rebuttable presumption. If communications designed to encourage individuals to register to vote or to vote name or depict a clearly identified candidate and meet the other requirements of the presumption (including the \$100 per candidate threshold), the person making the expenditure may rebut the presumption by filing a written statement explaining that the materials were distributed for the purpose of encouraging voting or registration and were not intended to influence the election.

Are polling, voter surveys, and public opinion research covered by the presumption?

Some polls and surveys conducted over the telephone within the presumption periods could be covered by the rebuttable presumption. However, there are two types of telephone communications that are specifically excluded from the definition of independent expenditure:

- A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging from voting, and
- A telephone call that names a clearly identified candidate that is made to identify an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate.

Polls and surveys conducted by other means (e.g., mailed or online surveys and questionnaires) could be covered by the presumption but a signed written rebuttal statement can be filed stating that the purpose of the poll or survey was not to influence an election. If a poll or survey relates to a public issue and does not mention a candidate's name, it is not subject to the presumption and no report or rebuttal statement must be filed.

If polling results or public opinion research (e.g., voter identification information) is contributed to a PAC to influence an election, the PAC must report the research as an in-kind contribution including the fair market value of the research.

Are Section 527 organizations covered by the law?

National organizations are subject to the Maine Election Law if they raise or spend money regarding candidates for state, county or local offices in Maine. This includes so-called Section 527 organizations that are organized outside the state of Maine. If a Section 527 organization makes an expenditure that contains express advocacy or is covered by the rebuttable presumption, it is required to file an independent expenditure report or a rebuttal statement. The organization may also have to register as a PAC if it spends more than \$5,000 to influence an election.

What is the consequence of filing an independent expenditure report late?

The late filing of an independent expenditure report can result in the assessment of a civil penalty up to \$5,000 except that if the total amount of expenditures in the report exceeds \$50,000, the maximum penalty is one-fifth of the amount reported late. (21-A M.R.S.A. § 1020-A(4-A) and (5-A))

STATUTORY PROVISION ON INDEPENDENT EXPENDITURES

21-A M.R.S.A. §1019-B. Reports of independent expenditures

1. Independent expenditures; definition. For the purposes of this section, an "independent expenditure":

A. Is any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and

B. Is presumed in races involving a candidate who is certified as a Maine Clean Election Act candidate under section 1125, subsection 5 to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 21 days, including election day, before a primary election; the 35 days, including election day, before a general election; or during a special election until and on election day.

2. Rebutting presumption. A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of making the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and must determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

3. Report required; content; rules. (REPEALED)

4. Report required; content; rules. A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election, the report must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements and matching fund provisions under chapter 14. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

B. A report required by this subsection must contain an itemized account of each expenditure aggregating in excess of \$100 in any one candidate's election, the date and purpose of each expenditure and the name of each payee or creditor. The report must state whether the expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate.

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

5. Exclusions. An independent expenditure does not include:

- A. An expenditure made by a person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents;
- B. A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting;
- C. A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and
- D. A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate.

COMMISSION RULE ON INDEPENDENT EXPENDITURES

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. **General.** Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 per candidate in an election must file a report with the Commission according to this section.
2. **Definitions.** For purposes of this section, the following phrases are defined as follows:
 - A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
 - B. "Expressly advocate" means any communication that
 - (1) uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"; or
 - (2) is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.
 - C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.
3. **Reporting Schedules.** Independent expenditures must be reported to the Commission in accordance with the following provisions:
 - A. Independent expenditures aggregating in excess of \$100 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, unless required to be reported according to the schedule in paragraph B.
 - (1) **Quarterly Reports.** *[Repealed]*

- (1-A) **60-Day Pre-Election Report.** A report must be filed by 5:00 p.m. on the 60th day before the election is held and be complete as of the 61st day before the election.
- (1-B) **11-Day Pre-Election Report.** A report must be filed by 5:00 p.m. on the 11th day before the election is held and be complete as of the 14th day before the election.

If the total of independent expenditures made to support or oppose a candidate exceeds \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure according to the schedule in this paragraph or paragraph B.

- B. Independent expenditures aggregating in excess of \$250 per candidate made during the sixty days before an election must be reported within two calendar days of those expenditures.

[NOTE: WHEN THE CUMULATIVE AMOUNT OF EXPENDITURES TO SUPPORT OR OPPOSE A CANDIDATE EXCEEDS \$250, AN INDEPENDENT EXPENDITURE REPORT MUST BE FILED WITH THE COMMISSION WITHIN TWO DAYS OF GOING OVER THE \$250 THRESHOLD.

FOR EXAMPLE, IF AN INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES THREE EXPENDITURES OF \$100 IN SUPPORT OF A CANDIDATE ON SEPTEMBER 8TH, SEPTEMBER 13TH, AND SEPTEMBER 29TH, FOR AN ELECTION ON NOVEMBER 6, 2012, AN INDEPENDENT EXPENDITURE REPORT MUST BE FILED BY OCTOBER 1ST. THE THIRD EXPENDITURE OF \$100 MADE THE CUMULATIVE TOTAL OF EXPENDITURES EXCEED \$250 AND THE TWO-DAY REPORTING REQUIREMENT WAS TRIGGERED ON SEPTEMBER 29TH. THE REPORT MUST INCLUDE ALL THREE EXPENDITURES.

AFTER SEPTEMBER 29TH, IF THAT INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES ADDITIONAL EXPENDITURES TO SUPPORT THAT CANDIDATE, THE REQUIREMENT TO FILE AN INDEPENDENT EXPENDITURE REPORT WITHIN TWO DAYS WILL APPLY ONLY IF THE CUMULATIVE TOTAL SPENT AFTER SEPTEMBER 29TH EXCEEDS \$250. FOR EXAMPLE, IF THE INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES TWO PAYMENTS OF \$200 TO PROMOTE THE CANDIDATE ON OCTOBER 8TH AND OCTOBER 13TH, ANOTHER INDEPENDENT EXPENDITURE REPORT MUST BE FILED BY OCTOBER 15TH DISCLOSING THOSE TWO EXPENDITURES.]

Independent expenditures aggregating in excess of \$100 per candidate made after the 14th day before an election must be reported within one calendar day of those expenditures.

For purposes of the filing deadlines in this paragraph, if the expenditure relates to a legislative or gubernatorial election and the filing deadline occurs on a weekend, holiday, or state government shutdown day, the report must be filed on the deadline. If the expenditure relates to a county or municipal election, the report may be filed on the next regular business day.

- C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate. Reports filed after the eighth day before an election must include the following information:
 - 1. the date on which the person making the expenditure placed the order with the vendor for the goods or services;
 - 2. the approximate date when the vendor began providing design or any other services in connection with the expenditure;
 - 3. the date on which the person making the expenditure first learned of the total amount of the expenditure; and
 - 4. a statement why the expenditure could not be reported by the eighth day before the election.
- D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.
- E. An independent expenditure report may be provisionally filed by facsimile or by electronic mail to an address designated by the Commission, as long as the facsimile or electronic copy is filed by the applicable deadline and an original of the same report is received by the Commission within five calendar days thereafter.

- 4. **Multi-Candidate Expenditures.** When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.
 - A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

[NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE

SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]

- B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.

[NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]

- C. If a candidate who has received matching funds because of a multi-candidate communication believes that he or she deserves additional matching funds because the communication disproportionately concerns his or her race, the Commission may grant additional matching funds in proportion to the relative treatment of the candidates in the communication.

- 5. **Rebuttable Presumption.** Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate in a race involving a Maine Clean Election Act candidate and that is disseminated during the 21 days before a primary election and 35 days before a general election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.

- A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) Printed advertisements in newspapers and other media;
- (2) Television and radio advertisements;
- (3) Printed literature;
- (4) Recorded telephone messages;
- (5) Scripted telephone messages by live callers; and
- (6) Electronic communications.

This list is not exhaustive, and other types of communications may be covered by the presumption.

- B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate, the candidate's immediate family, or a political committee;
 - (2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;
 - (3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;
 - (4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and
 - (5) other communications and activities that are excluded from the legal definition of "expenditure" in the Election Law.
- C. If an expenditure is covered by the presumption and is greater, in the aggregate, than \$100 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. Independent expenditures aggregating \$100 or less per candidate per election do not require the filing of an independent expenditure report or a rebuttal statement.
- D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the applicable 21-day or 35-day period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.
- E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.
- F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to the Commission. If the actual costs of the communications cannot be determined, the organization

distributing the communication to voters must report the estimated fair market value.

- G. If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

COMMISSION RULE ON COORDINATION

SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS

9. If an expenditure is made to promote or support the nomination or election of a candidate, or to oppose or defeat the candidate's opponent(s), and the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate, the expenditure is considered to be a contribution from the spender to the candidate. As used within this subsection, the term "candidate" includes a committee authorized by the candidate to promote or support his or her election, and all agents of the candidate or the authorized committee.
 - A. In cooperation, consultation or in concert with includes, but is not limited to:
 1. Discussion between the candidate and the creator, producer or distributor of a communication, or the person paying for that communication, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, and
 2. Participation by the candidate in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication.
 - B. An expenditure is presumed to be made in cooperation, consultation or concert with, or at the request or suggestion of a candidate, when
 1. the expenditure is made in cooperation, consultation or in concert with any person who, during the twelve months preceding the expenditure, has been the candidate's treasurer or an officer of the candidate's authorized committee, has had a paid or unpaid position managing the candidate's campaign, or has received any campaign-related compensation or reimbursement from the candidate;
 2. when the candidate has directly shared the candidate's campaign plans, activities, or needs with the spender for the purpose of facilitating a payment by the spender on a communication to voters to promote or support the candidate; or
 3. the communication replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate.

The candidate or spender may rebut the presumption by submitting sufficient contrary evidence.

- C. If a candidate requests that a party committee, political action committee, or other potential spender not make any expenditure to promote or support the candidate, or oppose or defeat the candidate's opponent(s), the request does not constitute cooperation or coordination.
- D. An expenditure will not be presumed to have been made in cooperation, consultation or concert with, or at the request or suggestion of a candidate, solely because:
 - 1. the spender has obtained a photograph, biography, position paper, press release, logo, or similar material about the candidate from a publicly available source;
 - 2. the person making the expenditure has previously provided advice to the candidate on suggested communication strategies, budgets, issues of public policy, or other campaign plans or activities;
 - 3. the person makes an expenditure in response to a general, non-specific request for support by a candidate, provided that there is no discussion, cooperation or consultation with the candidate prior to the expenditure relating to the details of the expenditure;
 - 4. the spender has also made a contribution to the candidate, or has discussed with the candidate his or her campaign plans or activities as part of the candidate's solicitation for a donation;
 - 5. the expenditure is made by a for-profit or non-profit organization for invitations, announcements, food and beverages and similar costs associated with an event to which the candidate has been invited by the organization to make an appearance before the organization's members, employees, shareholders and the families thereof; or
 - 6. the expenditure is made by an individual who spends \$100 or less for costs associated with a sign that is lettered or printed individually by hand and that reproduces or replicates a candidate's campaign-related design or graphic.